

TOLLING AGREEMENT
FOR CLAIMS UNDER THE CLEAN AIR ACT
RELATING TO SKY BILLIARDS, INC. dba BEST CHOICE PRODUCTS

The United States Environmental Protection Agency ("EPA"), contends that it has a cause of action pursuant to Sections 111, 113 and 183 of the Clean Air Act, 42 U.S.C. §§ 7411, 7413 and 7511b, against Sky Billiards, Inc. dba Best Choice Products ("Respondent") for, *inter alia*, violations of Sections 111 and 183(e) of the Clean Air Act, 42 U.S.C. §§ 7411 and 7511b(e), and the regulations promulgated under Title I of the Act. More particularly, EPA contends that Respondent sold, distributed, and/or imported portable fuel containers that were not covered by an EPA certificate of conformity (the "Tolled Claims").

The EPA and Respondent ("Parties") enter into this Tolling Agreement to facilitate settlement negotiations between the Parties within the time period provided by this Agreement, without thereby altering the claims or defenses available to any Party hereto, except as specifically provided herein.

The Parties, in consideration of the covenants set out herein, agree as follows:

1. Notwithstanding any other provision of this Tolling Agreement, the period commencing on February 1, 2019 and ending on April 30, 2019, inclusive (the "Tolling Period"), shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the United States on the Tolled Claims.

2. Any defenses of laches, estoppel, or waiver, or other similar equitable defenses based upon the running or expiration of any time period shall not include the Tolling Period for the Tolled Claims.

3. Respondent shall not assert, plead, or raise against the United States in any fashion, whether by answer, motion or otherwise, any defense of laches, estoppel, or waiver, or other similar equitable defense based on the running of any statute of limitations or the passage of time during the Tolling Period in any action brought on the Tolled Claims.

4. This Tolling Agreement does not constitute any admission or acknowledgment of any fact, conclusion of law, or liability by any Party to this Tolling Agreement. Nor does this Tolling Agreement constitute any admission or acknowledgment on the part of the United States that any statute of limitations, or similar defense concerning the timeliness of commencing a civil action, is applicable to the Tolled Claims. The EPA reserves the right to assert that no statute of limitations applies to any of the Tolled Claims and that no other defense based upon the timeliness of commencing a civil action is applicable.

5. This Tolling Agreement may not be modified except in a writing signed by all the Parties. The Parties acknowledge that this Tolling Agreement may be extended for such period of time as the Parties agree to in writing.

6. It is understood that the EPA may terminate settlement negotiations and commence suit at any time, upon provision of written notice by mail to Respondent. Where the EPA elects to terminate negotiations under this Paragraph, the Tolling Period shall continue for

the duration set forth in Paragraph 1. Nothing herein shall preclude the commencement of any action by the United States to protect the public health, welfare, or the environment without provision of advance notice.

7. This Tolling Agreement does not limit in any way the nature or scope of any claims that could be brought by the United States in a complaint against Respondent or the date on which the United States may file such a complaint, except as expressly stated herein.

8. This Agreement is not intended to affect any claims by or against third parties.

9. This Tolling Agreement is effective upon execution by the Respondent, and may be signed in counterparts.

10. This Tolling Agreement contains the entire agreement between the Parties, and no statement, promise, or inducement made by any Party to this Tolling Agreement that is not set forth in this Tolling Agreement shall be valid or binding, nor shall it be used in construing the terms of this Tolling Agreement as set forth herein.

11. The undersigned representative of each of the Parties certifies that he or she is fully authorized to enter into the terms and conditions of this Tolling Agreement and to legally bind such party to all terms and conditions of this document. This Agreement shall be binding upon the United States, acting on behalf of the United States Environmental Protection Agency, and upon Respondent and its successors.

SIGNATURES

The United States Environmental Protection Agency consents on the following date to the terms and conditions of this Tolling Agreement by its duly authorized representatives.

Date

Phillip A. Brooks
Director
Air Enforcement Division
Office of Civil Enforcement
United States Environmental Protection Agency

Date

Providence Spina
Air Enforcement Division
Office of Civil Enforcement
United States Environmental Protection Agency

Respondent consents on the following date to the terms and conditions of this Tolling Agreement by its duly authorized representative.

Date: 2-13-19

By: Kimberly Bock

Counsel for Best Choice Products

